Yorkshire Dales National Park Authority

Committee: Planning

Date: 16th July 2024

Applicant: Network Rail

Parish: Dent

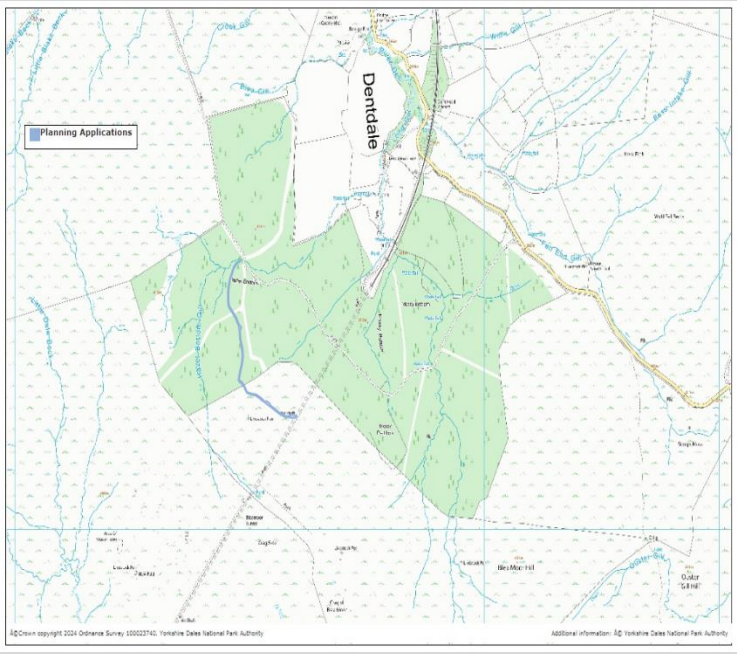
Officer: Mark Williams

Application No: S/01/363

Site Address: Access track above Bleamoor Tunnel, Dent (GR: 377045, 483580)

Proposal: Full planning permission for construction of access track, including peat restoration management proposals (retrospective)

Purpose of Report
That Members **Refuse** planning permission for the reasons stated below.



Reason for Committee Consideration

1. This application is reported to Committee for the following reason: in the opinion of the Head of Development Management it is in the best interests of the National Park Authority that the application is considered by the Committee.

Application Site

2. Blea Moor tunnel carries the Settle-Carlisle railway under Blea Moor for a distance of 2380m, on a stretch of the line between Dent Head viaduct to the north and Ribblehead viaduct to the south. The tunnel is served by three (3) ventilation shafts, each of which is served by an open circular brick turret on the uplands of Blea Moor.

3. The application site follows the route of a track (which has almost been completed), intended as a temporary 'haul road' to transport plant, equipment and personnel to the first of the ventilation shafts which require maintenance and repair. Once completed the track would extend 620m from the end of an existing forestry track at Mossy Bottom to the first turret in a south/southeast direction. The majority of the track has already been constructed.

4. The three shafts are located within the Settle Carlisle Railway Conservation Area. The application site lies outside of any designated nature conservation site, but within the 1km buffer zone for the Whernside SSSI to the southwest.

Proposal

5. Planning permission is sought, retrospectively, for construction/retention of a temporary access track running from Mossy Bottom to the first ventilation shaft (Shaft 3). The track has been completed along most of its intended length. According to the application form works started on 11 August 2023 and were stopped by the landowner in September 2023.

6. The completed track would be 620m long and 4.5m wide. It has been constructed of stone with layers of terram and geogrid underneath. Construction has involved the excavation of earth, including peat, to reach ground sufficiently solid to build on. Excavated peat has been stored to the site pending restoration. The depth of stonework varies from 600mm to 1m.

7. The track is needed to provide access for personnel, plant and equipment up to the shafts, which are in need of repair. These works themselves are relatively minor and, as these structures are not listed buildings, do not by themselves require listed building consent or planning permission.

8. The proposed works to the turrets are necessary as drainage within the shafts has failed, resulting in ice forming within the shaft and water running onto the railway track below. Works would include fixing new tops to the turrets and the repair of brick and metalwork. There is therefore a public safety case for the proposed works to the ventilation shafts.

9. The applicant, Network Rail (NR) has considered various alternative methods of gaining temporary access to the shaft head, including the use of helicopters, floating access tracks, low pressure tracked machines and bog mats. These options are considered in more detail below, but were discounted by NR, with the result that they considered the construction of a temporary haul road to be the preferred means of access.

10. The application is accompanied by the following supporting documentation:

    - Shaft Methodology
    - Peat Management Plan (including Access Options)
    - Ecological Report

11. The Shaft Methodology assumes a working window on the turrets from May to avoid winter working. It is understood that the works carried out so far have also avoided the bird nesting season. The Management Plan includes details of peat restoration, based on survey work previously carried out by the Yorkshire Peat Partnership (YPP) for the landowner.

12. The application site is on land owned by a third party, is not classed as railway 'operational land' and so does not benefit from permitted development rights set out in Part 8 (Transport related development) of the General Permitted Development Order (GPDO).

13. Part 4 of the GPDO states that temporary buildings and structures can be permitted development. However, by reason of its scale, means of construction and long-term impact, the haul road is not considered to benefit from these permitted development rights. The applicant's own Methodology Statement states that the road could be either removed or left in-situ, depending on decisions made by relevant parties and landowners.

Relevant Planning History

14. There are no relevant applications.

Consultations

15. The comments of statutory and non-statutory consultees are summarized below:

Historic Environment Team No comments received at time of writing.

Yorkshire Wildlife Trust (YWT) Yorkshire Peat Partnership (YPP) worked with the landowner at the application site to restore peatland between 2020 and 2022 funded by both Nature for Climate and Countryside Stewardship agreements.

When the installation of the haul road was brought to the attention of the YWT, YPP provided advice to the landowner and assessed the level of damage to the peatland habitats.

YPP then advised Network Rail on the immediate work required to stabilise the exposed peat. The intermediary work to address the damage caused has been undertaken. However, due to the prolonged period between the damage occurring and YPP being commissioned to undertake the works to stabilise the exposed bare peat, damage has continued to occur. For example, peat was left uncovered for a significant period and it is impossible to comprehensively cover up the piles of excavated peat, plus erosion has taken place due to the channeling of water into new gullies (50+) that have formed around the track. The installation of the track has disrupted the structure of the peat and the peatland hydrology. The specialised peatland vegetation that forms under healthy blanket bog conditions forms new peat, captures carbon, slows the flow of water across the landscape and provides habitat for rare and important birds and other wildlife. Once the peat structure and hydrology has been compromised, these processes are also compromised.

With this in mind, strongly object to the undertaking of this work without the necessary survey, detailed scheme design and planning consent in place. The damage already caused through the disruption and erosion of peat and the carbon released through these actions is a significant concern to YWT and YPP. Recommend that this should be subject to internal review by Network Rail and lessons learned in terms of the necessity of adequate survey, consultation and planning for future projects.

Natural England No objection.

Area Ranger (Western Dales) Public Footpath 516054 passes to the south of Shaft 3 and along the line between Shaft 3, 2 and 1. The access track through the forestry land (not included in this application) also crosses FP 516054 and will be impacted by increased vehicle movements. Also not included in this application is the intended works between Shaft 3, Shaft 2 and Shaft 1. This will be directly on the line of the Public Footpath. Details of the intended works, public access and how it will be left after the project has been completed must be established before works commencing.

The PROW must remain open and available to users during works. A safe system for pedestrians to cross any excavations or disturbed ground must be in place. Materials or machinery must not be stored on the PROW. There is no defined width on the Definitive Statements meaning that the assumed width of the PROW is the full breadth of the unobstructed track which must not be infringed upon during or after construction. No further crossing points (e.g. gates) should be installed on the PROW without a Section 147 application; and then only for the purpose of preventing ingress/ egress of stock and/or access to forestry.

If it is necessary to close off the public right of way, for reasons of building or health and safety, then the applicant must contact the Area Ranger.

Wildlife Conservation Officer (WCO) Application does not comply with Local Plan Policies W1 or W2. Bespoke compensation should be agreed for the mitigation of adverse effects and secured by condition. See Assessment of Main Issues.

Highways - Westmorland & Furness Council No objections to the proposal, subject to a condition requiring details of a surface water drainage system to be submitted and approved. The access is existing and taken from a private road which is to acceptable highway standards, so as long as the option is approved and progressed so this track can be used, would have no issues with this.

Dent PC The Parish Council strongly objects to this application. Work was commenced on this prior to the application being submitted and without the knowledge of the landowner who would probably still be unaware if one of the councillors here had not informed him. The environmental damage that this work is likely to cause is unacceptable and the Parish Council strongly supports and echoes the comments of YWT, YPP and the landowner. Additionally, the work is likely to increase the risk of landslip.

Public Responses

16. Advertised by site notice. Expiry date: 8th May 2024. Six responses received, including one from the agent acting for the landowner. Grounds of objection:

- Landscape harm
- Visual impact on Dales Way
- Harm caused to biodiversity and peat
- Impact on historic environment of tunnels and associated shafts
- Harm to Conservation Area
- Granting permission would set a precedent
- Higher costs of alternative measures are not a planning consideration
- Alterative measures have not been fully considered (e.g. helicopter lift)
- Possible impact on stability of land
- Landowners do not want road to remain in situ once works completed
- Loss of trees
- Concern re disposal of trade effluents/fuel spillage
- There should be no oil/fuel storage on site
- If permission is granted conditions recommended by YWT and YPP should be added

Assessment

Key Issues:

- Principle of development
- Landscape
- Biodiversity

- Heritage
- Sustainability
- Nature Recovery
- Alternative means of access
- Parish Council comments
- Equality Act

Principle of Development

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on Local Planning Authorities to determine planning applications in accordance with the development plan unless there are material reasons to do otherwise. The development plan for this area is the adopted Yorkshire Dales National Park Local Plan (the development plan). The most relevant policies are:

SP2: National Park purposes

SP4: Development quality

W1: Wildlife site, species and networks

W2: Biodiversity enhancement

L1: Heritage Assets

L10: The open upland

18. Section 245 of the Levelling Up and Regeneration Act (2023) states that relevant authorities '….in exercising or performing any functions in relation to or so as to affect land in any National Park to seek to further the purposes of the National Park and if it appears that there is a conflict between those purposes, must attach greater weight to the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of the area comprised in the National Park.'

19. Paragraph 182 of the National Planning Policy Framework (2023) makes clear that great weight should be given to conserving and enhancing the scenic and natural beauty in National Parks.

20. Local Plan Policy SP2 (National Park purposes) states that development will be permitted that furthers the statutory National Park purposes of:

a) Conserving and enhancing natural beauty, wildlife and cultural heritage;

b) Promoting opportunities for the understanding and enjoyment of the special qualities of the National Park by the public.

Development that prejudices these purposes will not be permitted, although an exception may be made where development can demonstrate an overriding need and the harm can be mitigated or, as a last resort, compensatory measures can be agreed.

21. Policy SP4 sets out a range of development quality requirements for all forms of development, including design expectations, transport-related considerations, safety and amenity issues and environmental safeguarding. With reference to design, development should be sympathetic and complementary to the site, its surrounding context and landscape setting.

22. The upper stretch of the track, beyond the forestry plantation, lies within an area of Open Upland, as defined for the purposes of Local Plan Policy L10 (The Open Upland) which states that:

'In the areas defined as open upland on the policies map, development will only be permitted where it can be demonstrated that:

a) it will not conflict with W1 (Wildlife sites, species and networks) and it will have a neutral impact on the special qualities of open upland, or is otherwise essential for the management of those qualities; and,

b) there is no alternative solution that would lessen the impact and appropriate mitigation measures are taken to reduce harm.

Proposals that would improve public access will be regarded more favourably.

Where the development is no longer needed for essential management the developer will be required to remove it and restore the site to its former condition.'

23. The development has a negative impact on the special qualities of the open upland, i.e. its intrinsic undeveloped, remote and tranquil character, the visual quality of the open moorland and its rich biodiversity; and is not necessary for the management of those qualities. Furthermore, as the applicant has demonstrated, there are alternative solutions which would have a lesser impact, which are considered in more detail below. As such the development is in conflict with Policy L10, SP2 and SP4, as well as the relevant paragraphs in the NPPF.

Biodiversity

24. The application site does not lie within any designated nature conservation site, but is within the 1km buffer zone for the Whernside SSSI. Despite this, Natural England has no objection to the development.

25. Local Plan Policy W1 (Wildlife sites, species and networks) states that all development proposals will be required to provide relevant information so that an informed decision can be made. The level of the information required will be proportionate to the hierarchy of sites, habitats and species above, and the scale

of the likely adverse impacts. Agreed measures for the mitigation or compensation of adverse effects under this policy will be secured by a planning condition or Section 106 agreement.

26. Local Plan Policy W2 (Biodiversity enhancement) states that new development that would have an impact on biodiversity will be required to make a proportionate on-site contribution to wildlife enhancement.

27. The Blea Moor shafts are located within the Littledale Common & Winterscale HLS (Higher-Level Stewardship Scheme). The Whernside SSSI is within close proximity to the access route through the forestry plantation, and its condition is described as 'unfavourable declining'.

28. The route of the track covers a variety of upland habitats: blanket bog, acid neutral flush, upland acidic grassland, fen and upland calcareous grassland, together with limestone rock outcrop/scree habitat to the west boundary of the tunnel. Notably, blanket bog and upland calcareous grassland, both Priority Habitats, are located along the length of the red line boundary.

29. Dent Head has been under a Countryside Stewardship scheme which includes Peat Restoration from 2020-2022 which was contracted to W P Sutcliffe and YPP acting as the Principle Designer and Clerk of the restoration works. Dent Head is currently in a Nature for Climate peat restoration contract which is in place from September 2022 and lasted until March 2024. The access track falls within land managed under an HLS agreement dating from 2010.

30. The application is accompanied by an Ecological Report and a Peatland Restoration Plan. The work detailed in the planning application is located on blanket bog. Blanket bog is classed as irreplaceable habitat and is afforded significant protection in the NPPF (para 186c). The Glossary to the NPPF defines irreplaceable habitat as "Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking account of their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement……" (NPPF Annex 2).

31. The Framework advises that "development resulting in the loss or deterioration of irreplaceable habitats …….. should be refused, unless there are wholly exceptional circumstances[67] and a suitable compensation strategy exits". The advice is qualified by footnote 67: "For example infrastructure projects (including nationally important infrastructure projects, orders under the Transport and Works Act and hybrid bills), where the public benefit would clearly outweigh the loss or deterioration of the habitat."

32. The unauthorised works have clearly caused loss and damage to an irreplaceable habitat. For such damage to be justified there needs to be 'wholly exceptional circumstances'. The circumstances are that the applicant needed to access the tunnel ventilation shafts to fix new tops to the turrets and carry out repairs to brick and metalwork. With a wide interpretation the proposed repairs

could be described as an ‘infrastructure project’ being works to railway infrastructure where there is some public benefit in resolving a problem. The repair works are clearly not a ‘nationally important infrastructure project’ of the scale of HS2, a power station or new motorway where the public benefit could be so great as to outweigh the loss of irreplaceable habitat.

33. Furthermore, it is considered that access to the site could have been achieved by other less environmentally damaging means than constructing a 620m long road that entailed removing peat and infilling with stone to depths of 600mm to 1m. Alternative methods for achieving access include helicopter lifts, using Argo Cat vehicles, use of bog mats, and floating access tracks.

34. The application is accompanied by a Peat Management Plan which includes consideration of access options at Appendix 1. These are considered in turn below.

Helicopter lifts

35. Members will be aware that helicopters are frequently used by the Authority’s Ranger Service to lift plant, equipment and stone up onto the upper fells to undertake footpath repairs and lay large stone flags on busy routes. However, the applicant has discounted their use on various grounds, including health and safety.

36. It is claimed that a ‘military grade’ helicopter would be required due to the materials and plant which need to be transported, and that no such helicopter is available. However, no further detail has been provided to substantiate this claim. It is also claimed that there is no safe route for a helicopter, that many runs would be needed and a helicopter would not have the capacity to lift some plant and materials. Though again, no further information has been provided.

Argo-cat

37. These are all-terrain amphibious vehicles that are regularly used by gamekeepers and contractors as a safe and non-damaging way of accessing remote sites on a daily basis. The applicant rejected this option as it is claimed that repeated runs up and down to the site with plant and personnel would cause damage and create an unsafe surface.

Low pressure tracked machines/bog mats

38. The potential use of bog mats was discounted by the applicant due to the undulating ground and slope gradient. In addition, the applicant states that this would not allow for the safest machinery to be used for the job, i.e. transporting slung scaffold poles. It is further argued that it would not provide a safe rescue plant for injured parties.

39. However, agents acting for the landowner disagree, claiming that bog mats are extremely robust even on undulating ground, with the used of tracked machinery. Soft and undulating areas can be crossed by using multiple layers of bog mats. Further, it is claimed that bog mats would only be required to move in the heavy plant, not for daily usage as Argo-cat vehicles do not need to use them.

40. The use of low-pressure machinery was discounted due to the claim that repeated daily runs with no fixed path would cause uncontrolled issues and create an unsafe environment. Again, the landowner's agents challenge this assumption - heavy plant would not be required for daily runs, which could be performed using Argo-cat vehicles. In addition, if bog mats were laid then they would create a fixed path.

41. The application documents also say this would not provide a safe rescue plan for injuries. However, with adequate emergency plans, satellite phones and access and egress with an Argo-cat for minor injuries, the agent considers that it is possible to have safe rescue plans from remote moors and fells.

42. In terms of moving larger equipment such as scaffold poles, the applicant seems to have discounted using a combination of methods (e.g. using helicopters to transport larger items of plant and equipment).

Floating access tracks

43. Floating access tracks are constructed directly on top of the peat relying on the strength of the in-situ peat for support. They cause less damage than excavation-and-fill roads. Floating tracks are considered to be a viable option over peat more than 1 metre deep and gradients not exceeding 5%. The submitted Peat Management Plan recommends the use of floating tracks where the peat depth allows, reverting to Cut (excavation & replacement) tracks where this is not feasible. However, a site inspection suggests that the whole length of the track has been constructed as a Cut track.

44. According to the landowner's agent the peat at the application site is between 1.2 – 1.8m deep and therefore classed as deep peat (anything over 400mm is categorised as 'deep peat' by the UK Government). It would therefore seem capable of accepting a floating access track (subject to gradients).

45. It is considered that the criticisms levelled by both the Yorkshire Wildlife Trust and agents acting for the landowner are legitimate given that both organisations (and indeed the Authority's Ranger Service) are both regularly involved in carrying out similar works which require temporary access over peatland.

46. In summary it is considered that the applicant has not adequately demonstrated that alternative, less damaging, means of access (either individually or in combination) are not feasible. As such the proposal does not demonstrate that the circumstances necessitating the development are 'wholly exceptional' as required by para 185c of the NPPF.

47. The application includes peat restoration works which are set out in the Peatland Restoration Plan that cover the entire restoration of habitats along the 620m access track and 1130m shaft to shaft, which would be overseen by a suitably qualified Ecological Clerk of Works (ECoW) and/or Specialist Appointed Contractor (SAC). However, as the YPP have stated, the fact that the excavated

peat was not immediately protected casts doubt as to whether full restoration is possible and details of compensatory measures have not been provided.

Heritage

48. The airshaft turrets lie with the Settle-Carlisle Railway Conservation Area. The Conservation Area Appraisal notes that, in terms of archaeological investigation: '*more work is necessary to identify and record further remains, as they may shed a new light on the construction workforce and how the line was built. For example, the workings, airshafts, tramways and engine beds associated with Blea Moor Tunnel provide an accessible and apparently very complete complex with significant research potential. Elements of the Blea Moor workings – particularly the airshafts and engine beds – survive in excellent condition and are visually spectacular with real potential for interpretation'*.

49. The proposed works to the shaft turret are essentially works of repair and will help to keep them, and the line, in working order. There is no doubt that these works in themselves are necessary and will help to conserve the character and appearance of the Conservation Area.

Sustainability

50. The damage that the construction of a fully excavated road on deep peat creates for the health, hydrology and ecology of blanket bog, including the drying out of the peat (releasing CO2) and erosion is substantial and potentially irreversible. The existing development, together with that proposed is therefore not considered to represent sustainable development.

Nature Recovery

51. For the reasons stated above the development has had, and will continue to have, a significant detrimental impact on Nature Recovery.

52. The application form suggests that the development is exempt from the requirements of Biodiversity Net Gain (BNG). However, while retrospective applications are exempt, the application includes the final length of track which has yet to be constructed. It is therefore considered that the development is not exempt and that BNG is required.

Parish Council Comments

53. The Parish Council has a strong objection to the development in line with the officer recommendation.

Equality Act

54. The Authority has a duty under s.149 of the Equality Act 2010 to have regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant characteristic and persons who do not share it. The relevant characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

55. It is considered that there are no overt reasons why this proposal would affect anyone with the protected characteristics such that the application should be permitted or refused on equality grounds.

Conclusion

56. The application seeks planning permission for the works which have, for the most part, already been carried out, together with the proposed completion of the track up to the first shaft. Given that the damage has already been done it could be argued that the pragmatic solution would be to grant permission to allow this short stretch of track to be completed and for repair works to the turret to be started. Granting planning permission would also allow for a scheme of restoration and, if agreed, compensatory works, to be secured by a condition or planning obligation. However, granting planning permission would effectively endorse the works that have already been carried out and given that the applicant is considering a much longer track to access the other two shafts Officers are not confident that due process will be followed in respect of those works. Retrospective planning applications should be considered in the same way as normal applications and it is considered that to allow such damaging development would set an undesirable precedent that could undermine public confidence in the operation of the planning system.

57. Refusal of planning permission would logically be followed by enforcement action however Members must be aware that an enforcement notice can only seek the

restoration of the land to its former condition and cannot secure works that would compensate for the harm that has been caused. Whilst the appearance of the land may be capable of restoration through the removal of the stone track and backfilling with the peat that has been removed, restoration of the biodiversity and hydrology of the land may not be fully achievable. Restoration through enforcement action may also take some time to achieve should the applicant chose to lodge an appeal rather than comply with the notice.

58. Whilst the enforcement route may take longer, seeking a potentially speedier solution through the granting of planning permission may make little difference in the long term bearing in mind that the applicant is seeking to extend the track by a further 1km to access the other two turrets. In effect restoration would not begin until work on all three turrets had been completed.

59. It is hoped that if permission is refused the applicant will revisit alternative methods of achieving access which have already been explored and dismissed and engage positively with the Authority to restore the land and find a less environmentally damaging solution to repairing the tunnel.

60. In conclusion, the refusal of planning permission and enforcement action does not mean that shafts cannot be repaired, simply that other means of access need to be employed. This undermines the public safety argument for the works and therefore that public benefit should carry more weight than further damage to irreplaceable habitat. The works carried out so far have caused damage to an irreplaceable habitat, without wholly exceptional circumstances being demonstrated and in the absence of an adequate scheme of compensation, which is contrary to advice in the NPPF and Local Plan Policies W1, W2 and L10.

61. Notwithstanding its intended temporary nature, the restored route of the track is unlikely to blend satisfactorily with the moorland habitat on either side, leading to a permanent ‘scar’ which would be harmful to the protected landscape of the National Park, contrary to the statutory purpose and Local Plan Policies SP2 and SP4.

Recommendation

62. It is recommended that permission is **Refused** for reasons based on the following:

- In the opinion of the Local Planning Authority the proposed development would detract from the intrinsic character and visual quality of this undeveloped open upland landscape both for the duration of the works and as it would leave a permanent scar on the landscape. As such the proposal is contrary to Policies SP2, SP4 and L10 of the Yorkshire Dales Local Plan (2015-2030), paragraph 182 of the National Planning Policy Framework (2023), and the first statutory purpose of the National Park.

- In the opinion of the Local Planning Authority the proposal would cause loss and damage to irreplaceable habitat (blanket bog) without demonstrating wholly exceptional reasons for doing so and without an adequate compensation strategy. The development also fails to provide any Biodiversity Net Gain. As such the proposal is contrary to Policies SP2, SP4, W1 and W2 of the Yorkshire

63. Given the harm outlined in the refusal reasons, it is advised that it is expedient to take enforcement action, and that the following action is agreed by the Committee:

a) That the Authority's solicitor be authorised to serve an enforcement notice to secure:

- restoration of the land to its former condition and appearance through the complete removal of the imported materials from the land and the restoration of the peat bog in accordance with a Peatland Restoration Plan.

  A period of compliance of 12 months be specified.

b) In the event if non-compliance with the requirements of the enforcement notice the Authority's solicitor may commence prosecution proceedings.